

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

This case is before the Court on Cross-Motions for Summary Judgment. Based on the pleadings, transcript, and argument submitted, Defendant's Cross-Motion For Summary Judgment is hereby GRANTED, and Plaintiff's Motion For Summary Judgment is DENIED.

The Court finds that the ALJ properly applied administrative res judicata in this case. Plaintiff has failed to overcome the presumption of non-disability, and is thus not entitled to benefits based upon his current application. See *Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988).

Further, the Court rejects Plaintiff's argument that a revision of the musculoskeletal listings constitutes a change in the law that bars the application of administrative res judicata. Even assuming Plaintiff were correct in arguing that a revision

1 of Listing 1.02 constitutes a change in the law, he has failed to
2 show how he meets this listing under either the prior or revised
3 version. See *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
4 1999) ("The burden of proof is on the claimant as to steps one to
5 four"). Accordingly, the Court hereby affirms the final decision
6 of the Commissioner of Social Security and GRANTS Defendant's
7 Motion for Summary Judgment.

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9 **IT IS SO ORDERED:**

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12 SAUNDRA B. ARMSTRONG
13 United States Magistrate Judge

14 DATED: 8/13/07
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